

# **Exhibit 12**

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 In re: :  
5 : Master File No.  
6 Global Brokerage, Inc. : 1:17-cv-00916-RA  
7 F/k/a FXCM, Inc. :  
8 Securities Litigation :  
9 ----- :

10 CONFIDENTIAL

11 REMOTE VIDEO DEPOSITION OF:

12 DROR NIV

13 THURSDAY, FEBRUARY 11, 2021  
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24 REPORTED BY:

25 SILVIA P. WAGE, CCR, CRR, RPR

<p style="text-align: right;">Page 118</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Please take a minute to review</p> <p>4 this document.</p> <p>5 MR. BAKER: For the record,</p> <p>6 Exhibit 37 is E Capital 50, 5-0.</p> <p>7 Q. Mr. Niv, let me know when you've had</p> <p>8 a minute to review.</p> <p>9 A. I know this agreement, you know.</p> <p>10 Yeah, I reviewed, yeah.</p> <p>11 Q. So do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. And is this an Option Agreement</p> <p>14 between Mr. Dittami and FXCM US dated April 14,</p> <p>15 2010?</p> <p>16 A. This is -- this is an agreement that</p> <p>17 Mr. Ahdout and Mr. Dittami signed, correct.</p> <p>18 Q. Okay. And the agreement is dated the</p> <p>19 same day as Mr. Dittami left FXCM?</p> <p>20 A. Yeah.</p> <p>21 Q. When did you first see this document?</p> <p>22 A. I don't recall the date.</p> <p>23 Q. Was it sometime around when it was</p> <p>24 signed?</p> <p>25 A. I would imagine so, yeah.</p>	<p style="text-align: right;">Page 120</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 at people, you know, that's why we have lawyers</p> <p>3 internally. That's their job.</p> <p>4 Q. Were you aware of anything in writing</p> <p>5 that rendered this agreement "null and void"?</p> <p>6 A. No, I don't do the details.</p> <p>7 Q. Looking at Paragraph 1 of this</p> <p>8 document about halfway down the first page, is it</p> <p>9 fair to say --</p> <p>10 A. Yes.</p> <p>11 Q. Sorry. Is it fair to say that under</p> <p>12 this agreement, FXCM had the right to purchase a</p> <p>13 70 percent interest in Effex for \$1?</p> <p>14 A. Correct.</p> <p>15 Q. Under the second whereas clause, it's</p> <p>16 the third paragraph from the top, it says, "FXCM</p> <p>17 has loaned to Effex the sum of \$2 million</p> <p>18 pursuant to that secured promissory note dated</p> <p>19 the date here of (the note) on terms more</p> <p>20 favorable than Dittami would have obtained in an</p> <p>21 arm's length transaction."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Is it true that FXCM loaned Effex</p> <p>25 \$2 million?</p>
<p style="text-align: right;">Page 119</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. And were you aware of before this --</p> <p>3 before or around when this document was signed,</p> <p>4 were you generally aware of the agreement and</p> <p>5 what the basic terms of it?</p> <p>6 A. Excuse me.</p> <p>7 The -- again, this is part of the,</p> <p>8 you know, ongoing debate we had internally over,</p> <p>9 you know, when people like William did not, you</p> <p>10 know, still believe that we should roll back from</p> <p>11 external execution and they wanted to, you know,</p> <p>12 if Effex exceeds to buy out Effex -- Effex</p> <p>13 Capital. And we -- and he wanted to have this to</p> <p>14 help them get started to return to these options.</p> <p>15 But we, you know, we told him that it is not</p> <p>16 possible and we no longer --</p> <p>17 THE STENOGRAPHER: I'm sorry, you cut</p> <p>18 out.</p> <p>19 A. We null and voided this document and</p> <p>20 told both him and Mr. Dittami that this is not</p> <p>21 possible, you know, our legal team said this is,</p> <p>22 you know, not doable.</p> <p>23 Q. And when you say you "null and voided</p> <p>24 this document," how did you do so?</p> <p>25 A. I'm not the details guy. I just yell</p>	<p style="text-align: right;">Page 121</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. No. So FXCM -- I mean, technically</p> <p>3 semi-true but not really. FXCM, essentially,</p> <p>4 collateralized the prime brokerage account to</p> <p>5 enable Mr. Dittami to get prime brokerage access</p> <p>6 to the FX market, which he would not have</p> <p>7 otherwise been able to do as an independent</p> <p>8 institution. That is a service FXCM did for</p> <p>9 others as well.</p> <p>10 You know, this was something that we</p> <p>11 -- I mean, he paid it after a few months and he</p> <p>12 got his own relationships. But this is in the</p> <p>13 beginning he had to, you know, to get going, we</p> <p>14 had to help him get going, which we did for a</p> <p>15 number of people in similar situations in the</p> <p>16 high frequency trading space like, for example,</p> <p>17 Lucid Markets, which we did end up buying, you</p> <p>18 know, for -- you know, we bought 50 percent,</p> <p>19 which I believe was 180 or \$150 million in 2013.</p> <p>20 But in 2009, 2010, we did help him</p> <p>21 get going with the exact same arrangement, this</p> <p>22 prime brokerage arrangement.</p> <p>23 Q. Okay. And is it fair to say that you</p> <p>24 know if this wasn't a loan, this was FXCM</p> <p>25 allowing Effex to use \$2 million as collateral</p>

<p style="text-align: right;">Page 122</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 which Effex then paid back you said after a few</p> <p>3 months?</p> <p>4 A. Correct.</p> <p>5 Q. Did Effex pay any interest on this</p> <p>6 amount of money?</p> <p>7 A. I don't know the specifics.</p> <p>8 Q. Would you agree that the terms of</p> <p>9 that say financial transaction were more</p> <p>10 favorable than for Mr. Dittami than he would have</p> <p>11 been able to obtain in an arm's length</p> <p>12 transaction?</p> <p>13 MR. DAHAN: Objection to form.</p> <p>14 A. It depends on -- I mean, it really</p> <p>15 depends on how much somebody else believed that</p> <p>16 they wanted his business. I mean, it's clearly</p> <p>17 we would have done that -- high frequency trading</p> <p>18 space in those times was a very attractive, you</p> <p>19 know, business. And Lucid, you know, and other</p> <p>20 firms, you know, were making a lot of money by --</p> <p>21 arbitrage was in between financial institution --</p> <p>22 exchanges was very easy -- easier at the time.</p> <p>23 It was not as competitive a business. This was</p> <p>24 the business that everybody was trying to get</p> <p>25 into and, you know, we as well. So we, clearly,</p>	<p style="text-align: right;">Page 124</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you know, people in that department work with</p> <p>3 him, you know, to help him interface better with</p> <p>4 the FXCM system. Again, we used to do that for a</p> <p>5 whole bunch of people each in a different</p> <p>6 circumstance.</p> <p>7 But, you know, generally, the</p> <p>8 incubating -- incubation services that, you know,</p> <p>9 multiple prime of primes offer, you know, that's</p> <p>10 not an abnormal relationship. You know, I think</p> <p>11 that -- it was limited to this.</p> <p>12 Q. Okay. I'm going to show you the next</p> <p>13 document.</p> <p>14 (Deposition Exhibit 38, 4/14/10</p> <p>15 e-mail from John Dittami to David Sassoon</p> <p>16 GLBR_00189079 marked Confidential, was marked for</p> <p>17 identification.)</p> <p>18 Q. This is Exhibit 38 and please let me</p> <p>19 know when you can see it.</p> <p>20 A. I can see it.</p> <p>21 Q. Okay. And I'll note that you do not</p> <p>22 appear on this e-mail, but please take a minute</p> <p>23 to review. I'm just going to ask you some --</p> <p>24 well, I'll ask you a few questions.</p> <p>25 MR. BAKER: For the record,</p>
<p style="text-align: right;">Page 123</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 did this for, you know, a number of people, you</p> <p>3 know, not just him, you know, in that space.</p> <p>4 And would other people have done it</p> <p>5 for him? Possibly, possibly not. It would</p> <p>6 demand a relationship and time spent. And, you</p> <p>7 know, at that moment in time he probably couldn't</p> <p>8 get a better deal, but I don't know if that would</p> <p>9 be the case or not. I, certainly, know people</p> <p>10 who got similar deals.</p> <p>11 But, I think, you know, at the end of</p> <p>12 the day it doesn't matter because we did not --</p> <p>13 we helped him get started, but we did not, you</p> <p>14 know, exercise this option or do anything, you</p> <p>15 know. We null and voided this agreement.</p> <p>16 Q. When you say, "we helped him get</p> <p>17 started," were there other ways in which FXCM</p> <p>18 helped Effex get started?</p> <p>19 A. Yes.</p> <p>20 Q. Such as what?</p> <p>21 A. We temporarily gave him office space.</p> <p>22 We have a department in FXCM called Programming</p> <p>23 Services where we do custom work for our clients</p> <p>24 to enable them to better connect and interface</p> <p>25 their software to our software. And so we had,</p>	<p style="text-align: right;">Page 125</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Exhibit 38 is GLBR 189079.</p> <p>3 Q. Mr. Niv, just let me know when you're</p> <p>4 ready.</p> <p>5 A. I'm ready.</p> <p>6 Q. Okay. And, as I mentioned, this is</p> <p>7 an e-mail that you do not appear to be on, but</p> <p>8 have you seen this document before?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay. But do you see that -- would</p> <p>11 you agree this appears to be an e-mail from Mr.</p> <p>12 Dittami to David Sassoon, Mr. Ahdout and</p> <p>13 Mr. Grossman?</p> <p>14 A. Yes.</p> <p>15 Q. And Mr. Dittami writes, "Just to</p> <p>16 confirm steps for meeting."</p> <p>17 Based on the context of this e-mail</p> <p>18 and the date, do you remember if you attended</p> <p>19 that meeting?</p> <p>20 A. I have no idea. No, I don't recall.</p> <p>21 Q. Do you remember if you would have</p> <p>22 been, at least, aware of this meeting?</p> <p>23 A. I don't recall. You know, again, big</p> <p>24 company, lots going on.</p> <p>25 Q. Is this something that -- is this</p>

<p style="text-align: right;">Page 154</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 know, like, again, we had lawyers in our</p> <p>3 employment. That's what their job was. That</p> <p>4 wasn't mine.</p> <p>5 Q. And so the times that the rate that</p> <p>6 Effex paid to FXCM did change, were you involved</p> <p>7 in or aware of those discussions each time?</p> <p>8 A. I would approve the change of rate,</p> <p>9 yes. Again, big substantive issues like change</p> <p>10 of rate I would approve.</p> <p>11 Q. Okay.</p> <p>12 A. That would probably be the only</p> <p>13 thing. The only other issue would be the</p> <p>14 benchmark conditions, right, under which this</p> <p>15 thing agreed -- rests. So, you know, kind of we</p> <p>16 obsessed over the -- we got frequent reports</p> <p>17 about what the rejection rates are for all the</p> <p>18 liquidity providers and we provided that to all</p> <p>19 of them and so they can compare to one another.</p> <p>20 We would -- you know, all of the, again, sort of</p> <p>21 speed of reply, hold time speeds, the -- for each</p> <p>22 maker, you know, performance, how much price</p> <p>23 improvements we would receive, you know, not us,</p> <p>24 clients would receive because of their</p> <p>25 interaction, all of those metrics that are used</p>	<p style="text-align: right;">Page 156</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 know, preference.</p> <p>3 Q. So, in the time that Effex was paying</p> <p>4 FXCM for order flow, was it generally true that</p> <p>5 Effex had the best executions you referred to</p> <p>6 with rejection rates and the other metrics that</p> <p>7 we discussed today?</p> <p>8 A. Yes, by far.</p> <p>9 Q. And because of that, FXCM gave them</p> <p>10 certain advantages like winning ties or lower</p> <p>11 markups; is that accurate?</p> <p>12 A. Correct. And we kept that -- in</p> <p>13 August 2014, we ended payment for order flow and</p> <p>14 for the next few years we still gave them the</p> <p>15 same preferences and had the same relationship,</p> <p>16 you know, minus the payment for order flow</p> <p>17 because of that -- you know, because of their,</p> <p>18 you know, ability to make our service that much</p> <p>19 more competitive.</p> <p>20 Q. So, if they had the best execution,</p> <p>21 why did they have to pay you for order flow?</p> <p>22 A. Because it's standard practice.</p> <p>23 That's what, you know, it's very common. That's</p> <p>24 what everybody does in the market, not just</p> <p>25 Effex, in equities too.</p>
<p style="text-align: right;">Page 155</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 to, you know, average spread paid, slippage, all</p> <p>3 of those things. So we had those discussions</p> <p>4 with people, right, and that was a frequent --</p> <p>5 because those were the metrics under which we</p> <p>6 were judged by our clients.</p> <p>7 Q. Okay. And, just to make sure I</p> <p>8 understand, were those sort of metrics for</p> <p>9 rejection rates that you were talking about, was</p> <p>10 that tied to the rate per million that Effex</p> <p>11 would pay to FXCM?</p> <p>12 A. Those, basically, underpinned the</p> <p>13 agreement. So he would have to be the best and</p> <p>14 the best by far for him to enjoy the preferential</p> <p>15 status that he received in terms of winning ties.</p> <p>16 Q. Was that -- the preferential status</p> <p>17 that he received, was that part of this services</p> <p>18 agreement?</p> <p>19 A. I don't recall specifics, but that</p> <p>20 was the -- you know, that's how we determined it.</p> <p>21 Q. And so, with him to use your words</p> <p>22 being the best in terms of execution, was that</p> <p>23 connected to the rate of -- that Effex would pay</p> <p>24 FXCM for order flow?</p> <p>25 A. No. It would just affect their, you</p>	<p style="text-align: right;">Page 157</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Were there other liquidity providers</p> <p>3 who had worse execution than Effex paying FXCM</p> <p>4 for order flow?</p> <p>5 A. We had some agreements with some</p> <p>6 other people for limited periods of time. But</p> <p>7 they, you know, we just had this -- could never</p> <p>8 come to terms with them on -- they could -- it's</p> <p>9 not come to terms. They could never execute what</p> <p>10 they promised. So, as you saw in previous</p> <p>11 e-mails that you showed me, we had different</p> <p>12 arrangements with Dresdner, with Citibank, with</p> <p>13 BNP, with Goldman, we had lots of others over,</p> <p>14 you know, trying to give them either preferential</p> <p>15 markup or payment for order flow with winning</p> <p>16 ties and to see if this would improve. You know,</p> <p>17 they would therefore step up and do much lower</p> <p>18 rejection rate and much faster response time and</p> <p>19 basically eliminate -- if we go back to one of</p> <p>20 the first e-mails you showed me the two big</p> <p>21 problems we had, which was spreads widening</p> <p>22 during market movements in Asian markets and the</p> <p>23 slippage that our clients were receiving. So</p> <p>24 they would have to show us larger sizes. You</p> <p>25 know, most banks just failed at doing that and</p>